IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE NINETH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE D.S.R.VARMA

WRIT PETITION NO: 4535 of 1995

Between:

S. Ranganayakuloo, S/o Narasaiah Nayakulu,
R/ o Nizamabad.

..... PETITIONER

AND

The Nizamabad Co-operative Sugar Factory Ltd.,

represented by its Managing Director, Nizamabad.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of Mandamus or any other appropriate writ, direction directions and to declare the action of the respondent in retiring the petitioner from service at the age of 58 years as illegal, and unconstitutional and to direct the respondent to continue the petitioners in service upto the age of 60 yrs with all benefits.

Counsel for the Petitioner: MR.S.BRAHMANANDA REDDY

Counsel for the Respondent: MR.V.VENKATARAMANA

The Court made the following:

ORAL ORDER:

Heard both sides.

2. The petitioner seeks a declaration that the action of the respondent in retiring him from service at the age of 58 years as illegal and unconstitutional and for a consequential direction to the respondent to continue the petitioner in service upto the age of 60 years with all benefits.

3. In this regard, the petitioner relies on G.O.Ms.No.396 Industries & Commerce (Sugar.II) Department, dated 03-09-1990, and also a judgment of a Division Bench of this Court in W.P.No.17549 of 1988 and Batch, dated 20-09-1991, wherein and whereby the Division Bench of this Court held that in view of G.O.Ms.No.396, dated 03-09-1990, being prospective in nature, the petitioners therein should be allowed to continue in service till they attain the age of 60 years.

4. From the counter-affidavit filed by the respondent, it could be seen that the petitioner had earlier filed a writ petition in W.P.No.4426 of 1995 and obtained interim direction to the effect that he shall be continued in service if he was working as on that date. It was further brought to the notice of this Court through the counter-affidavit that the petitioner had already been retired from service by the date of passing of the interim direction in the said writ petition and that the petitioner concealing the said fact had filed the present writ petition.

5. The learned Standing Counsel appearing for the respondent submits that having regard to the suppression of the fact that the petitioner had already retired from service when he obtained interim direction in W.P.No.4426 of 1995, the present writ petition is liable to be dismissed.

6. I see some force in the submission made by the learned Standing Counsel appearing for the respondent that the petitioner having filed a writ petition earlier and obtained interim direction to continue him in the service, if he was in service as of that date, had suppressed the said fact. But the fact that could be seen from the counter-affidavit is that the petitioner had already retired from service even before obtaining the interim direction in the said writ petition. This fact was not brought to the notice of this Court by the petitioner and filed the present writ petition. On that score alone, the writ petition is liable to be dismissed.

7. Accordingly, the writ petition is dismissed. However, there shall be no order as to costs.

D.S.R.VARMA, J

09TH SEPTEMBER 2004

KRK

To:

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